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FEDERAL COMMUNICATIONS COMMISSION
ADMINISTRATIVE SECRETARY

April 6, 1998

HAND DELIVERED

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street NW, Room 222
Washington, DC 20554

Re: POLICIES AND RULES FOR THE DIRECT BROADCAST SATELLITE SERVICE

PART 100, NPRM FCC 98-26, IB, Docket No. 98-21 dated February 26, 1998.
Comments of Dominion Video Satellite, Inc.


Dear Ms. Salas:

Enclosed is an original and four copies of Comments of Dominion Video Satellite in the subject proceeding.

Additional copies of Dominion's comments have been hand delivered to the office of Christopher J. Murphy, FCC International Bureau, 2000 M Street, N.W., Suite 500, Washington, D.C. 20554, and Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554. A copy has been sent via First Class Mail to International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Please date stamp and return a copy of this filing.

Sincerely,


Robert W. Johnson
Chairman, CEO

Attachments

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re:

Notice of Proposed Rule Making)	NPRM FCC 98-26
)	
POLICIES AND RULES FOR THE)	IB Docket No. 98-21
DIRECT BROADCAST SATELLITE)	
SERVICE PART 100)	

COMMENTS OF DOMINION VIDEO SATELLITE, INC.

Dominion Video Satellite, Inc. ("DVS") hereby submits its comments and recommendations to NPRM FCC 98-26, IB Docket No. 89-21 Released February 26, 1998.

The Commission requests comment in paragraph 26 of the NPRM on leaving due diligence as it is today, eliminating due diligence reporting altogether, or modifying the due diligence rules with "interim implementation certifications" or any other modifications.

Dominion suggests a modification of the due diligence rules to include a new provision whereby due diligence can be expressly accomplished either through the lease or purchase of existing transponders on a satellite owned by another DBS permittee or by constructing its own DBS satellites.

When the due diligence rules were first adopted, it was not contemplated that satellite technology capacity would develop so that the financial economies of scale would result in permittees building and launching satellites with transponder capacity in excess of the actual frequencies licensed to that particular permittee.

Dominion Video Satellite, Inc., (then known as Video Satellite Systems, Inc.) a first round DBS permittee entered the DBS licensing process in June, 1981 at a time when satellite manufacturers did not have specific satellites designed for high power DBS. A review of the applications filed by first round DBS permittees such as the Satellite Television Corporation ("STC-ComSat"), Dominion and United States Satellite Broadcasting ("USSB") will show that satellites were barely large enough to accommodate the limited number of frequencies then thought to be available. DBS frequencies and orbital allocations were not finalized until after the 1983 RARC, two to three years after the initial round of DBS permittees had submitted satellite design configurations. Most permittees modified their applications and satellite designs to request more frequencies based on the RARC DBS final allocations. Even then, DBS satellite technology was evolving and continued to evolve throughout the 1980's requiring most permittees to undertake several modifications to their satellite designs in order to keep pace with developing DBS satellite technology.

Technical developments throughout the 1980's resulted in the availability of DBS satellites with greater transponder capacity while at the same time lowering weight and size characteristics and cost so that more transponder capacity at higher EIRP output levels could be designed into a DBS spacecraft.

Today, DBS satellites with thirty-two transponders are the rule rather than the exception. When Dominion received its initial orbital slot allocation, eight 120 watt transponders was the maximum that could be designed into a single spacecraft. EchoStar Communications Corporation "ECHOSTAR", and other later round DBS permittees were able to enter the DBS permitting process at a time when sixteen channel DBS spacecraft were available and by the time ECHOSTAR and others were ready to begin satellite

construction in the early 1990's, thirty-two channel DBS satellites were just around the corner. Thus, in the case of EchoStar, after constructing and launching two sixteen channel DBS satellites, EchoStar I and EchoStar II, ECHOSTAR was able to construct and launch a thirty-two channel DBS satellite EchoStar III which was successfully launched on October 5, 1997 into the 61.5°W.L. orbital position.

The economies of scale that have developed within the satellite industry over the past decade have been nothing short of astounding. EchoStar speculated on constructing and launching a thirty-two transponder DBS spacecraft which can operate all thirty-two discrete DBS frequencies at the 61.5°W.L. DBS orbital position when only eleven of these frequencies have actually been licensed to EchoStar.

EchoStar and Dominion recognized the tremendous economies of scale to each company, including the ability to pass along lower programming costs to the American public by operating both EchoStar and Dominion's DBS frequencies from the same DBS spacecraft. Even though Dominion is constructing two smaller eight channel DBS satellites of its own, timing, public interest considerations, and other mutually beneficial business arrangements brought about an agreement where EchoStar would make available to Dominion and perhaps other DBS permittees holding DBS spectrum at the 61.5°W.L. orbital position, transponder capacity with frequencies already licensed to Dominion and others, capable of operating from a single thirty-two transponder DBS satellite platform.

The current spectrum allocation chart printed in the NPRM, although needing a few corrections to make note of the eight frequencies already requested by DVS and allocated to DVS by the FCC at the 166°W.L. orbital position, highlights the need and efficiency to be derived from the sharing of satellite transponder capacity. Of the existing twenty allocations

and/or assignments of DBS frequencies in the United States' allotted eight orbital slots, clearly sixteen are for eleven or fewer frequencies and seven of these are for eight or fewer frequencies at a single orbital location. Each of these would require first or second generation DBS spacecraft of a size significantly smaller than more cost effective larger satellites now available. ECHOSTAR was able to consolidate their eleven frequencies with DirectSat's ten frequencies at the 119°W.L. orbital position by purchasing DirectSat's DBS permit. Through still another acquisition, ECHOSTAR, DirectSat and DBSC's frequencies are now consolidated into one spacecraft at the 175°W.L. orbital slot. However, this still leaves ten permittees with eleven or fewer frequencies and without the ability to lease or purchase transponders for due diligence purposes, hundreds of millions of dollars could be wasted in satellite construction, launch costs that could otherwise be passed along to the consumer in lower programming distribution costs making DBS much more competitive in the MVPD marketplace. The present policy of requiring DBS permittees to meet due diligence only through the construction of individually owned spacecraft compels more consolidation of DBS spectrum into the hands of a few large DBS operators, stifling DBS intra industry competition and program innovation that would otherwise occur if smaller DBS permittee frequency allocations are permitted to be operated on a transponder lease or purchase basis on larger, already existing DBS spacecraft.

The concept of acquiring these transponders by lease or purchase, whether for cash or barter to satisfy due diligence responsibilities of individual DBS permittees clearly and directly satisfies all three of the Commission's stated policies, namely, efficient use of a valuable public resource, viable competition with cable, and rapid deployment of DBS systems in the public interest.

First, it promotes the efficient use of a valuable public resource (DBS channels). The concept of efficient use of DBS channels certainly embraces any action by the Commission that would result in an overall reduction of the cost of delivering DBS programming to the American public. The requirement for one licensee to build a \$120+ million dollar satellite with \$120 million more in launch and launch insurance cost with redundant frequency/transponder capacity to be co-located at the same orbital location serving the same geographical area or country as a duplicate satellite of another permittee would be the ultimate waste of resources.

Without a doubt one of the greatest costs to be passed along to the American public is the expense associated with constructing and launching DBS satellites, both initially and replacement satellites following the expected 10 to 12 year life span of existing DBS satellites. When two or more DBS permittees agree to utilize the same spacecraft with complementary programming services like ECHOSTAR and DVS have proposed, with mutually beneficial financial arrangements for the use of that transponder capacity either through leasing for cash or bartering airtime, or outright purchase or any other creative business arrangement which results in a more efficient utilization of the space hardware and spectrum, the potential to reduce the cost of service to the American consumer is immense.

The spacecraft owner receives an income stream or other confirmation of value which proportionately reduces the cost burden of payment for existing spectrum and the transponder lessee or purchaser is relieved from the burden of duplicating satellites with the same geographical footprint service objective, which allows for substantial reductions in capital recoupment through lower fees charged for programming to customers.

In the case of permittees like DVS with smaller or fractional DBS frequency assignments, by leasing or buying transponders for cash or barter of airtime on a thirty-two transponder large DBS satellite like EchoStar III which is already in orbit, this potential arrangement will likely result in lower cost of programming to consumers. In DVS' case, this type of arrangement with EchoStar has produced at current digital compression rates a package of over thirty-two television and radio channels of specialized niche programming for a one time, lifelong activation of \$295.00 with no further monthly charges or a low \$9.99 per month continuing subscription fee.

Looking to the future, as the life expectancy of existing satellites near the end of their ten to twelve year life, DBS permittees will be more apt to cooperate with each other in the hardware replacement decisions by joint venturing with each other or neutral third parties to construct and launch larger thirty-two transponder satellites and maintain their individual frequency allocations by leasing or purchasing only the transponders that they are licensed to operate. This spreading of the cost of satellite hardware over more than one permittee would result in a potential for improved performance and delivery of larger standardized DBS spacecraft including a potential for third party satellite hardware providers (as is done now in the FSS services) which could dramatically impact on the delivery cost of programming while providing increased choices of service providers.

In addition to being efficient, leasing or buying transponders for cash or barter also addresses a second important policy objective of the FCC, namely the issue of competing with cable. Spreading the cost of the space hardware over more than one licensee, especially where there are different but complementary programming objectives, results in a lower entry cost for consumers and makes the DBS delivery system increasingly cost

competitive with cable, a prime public interest objective of the Commission.

EchoStar and DVS already have the lowest program package rates in the industry including some pricing lower than most cable systems. DVS' unique low cost programming package is only available via high power DBS, making DVS' programming package either bought separately, or when combined with any of ECHOSTAR's DISH program packages, a standout competitor with most cable systems. The ability for DBS permittees to dramatically reduce programming costs to the consumer by sharing the huge cost of satellite hardware through leasing or purchasing transponders is a sure way to quickly bring new DBS providers into the market place and through competition move the DBS programming cost to the consumer even lower.

The lease/purchase for cash or barter option for due diligence clearly addresses a third important FCC policy issue of rapid deployment of DBS services. Currently there is a minimum of 24 months or more for the construction and launch of larger production model DBS satellites. The construction timetable is somewhat longer for smaller uniquely designed DBS spacecraft that meet the needs of DBS permittees with eleven or fewer assigned frequencies.

It makes little economic sense for multiple DBS satellites with sixteen or more transponders to be constructed and launched into the same orbital slots where each permittee is left with surplus transponder capacity that cannot be utilized. Certainly DBS permittees have the right to bear this increased cost, but others like DVS also have the right to enter into creative arrangements like that which DVS has done with EchoStar to utilize surplus transponder capacity that would otherwise have been wasted and to place into service immediately a greater variety and abundance of DBS programming services.

Utilizing surplus DBS transponder capacity will result in the potential for many hundreds of additional programming channels to be made available much more quickly and cost effectively. In every way the transponder lease or purchase for cash or barter option for meeting due diligence enhances every major policy issue articulated by the Commission for DBS.

The regulatory protocol for transponder lease/purchase could have numerous benefits. One that is advisable and speaks to the Commission's concern regarding the warehousing of spectrum would be to require any permittee leasing or purchasing transponders on another permittee's spacecraft to begin delivery of service to the American public within twelve (12) months from the date of satellite operation. In this one element alone rests the potential for numerous of the existing fractional frequency assignments to be immediately pressed into service in less than half the time that it would take for the same frequencies to be initiated on newly constructed spacecraft.

Another regulatory consideration would be to continue to require that whether it is a lease or purchase, to be free of unresolved contingencies. As creative business relationships among DBS permittees and programmers unfold, the consideration for the lease or purchase could be many things, such as cash, stock, programming rights, bartered satellite spectrum, advertising considerations, etc. The point would be to have the total package of consideration fully committed without contingencies prior to the use of the leased or purchased transponders so that there would be no chance of loss of control of the transponders during the lease term and thus maintain the potential for an independence of service to foster numerous DBS companies large and small and added provision for healthy competition among DBS companies.

The Commission has already approved the entire purchase of two DBS permittees by another, i.e. EchoStar's purchase of Direct Broadcasting Satellite Corporation "DBSC" and DirectSat Corporation which were purchased with EchoStar securities.

In the case of allowing leasing and/or purchasing of transponders by one DBS permittee on another DBS permittee's satellite, the effect would be to foster competition and improved financial economies of scale rather than possibly reducing competition when one DBS permittee is allowed to completely buy the permit of another which was the case where TEMPO Satellite, Inc. and cable partners PRIMESTAR attempted to purchase the permit of Advanced Communications, Inc. which would have allowed Advanced to completely exit the DBS business and a cable ownership dominated DBS competitor to enter the DBS business. As a result of the Commission's action, PRIMESTAR continues as a successful MVPD DTH provider in the FSS service, and the Advanced permit is now in the hands of MCI/NewsCorp who have an opportunity to provide a new, competitive MVPD market high power DBS programming service. Fostering intra DBS industry competition may not be as important a goal of the Commission today where the competitive focus is on inter MVPD industry competition, particularly with cable. However, by expanding the due diligence compliance rules now, which would permit leasing and/or purchasing transponders among DBS permittees and the combining of the operation of these transponders on larger DBS spacecraft, the Commission would be promoting an important public service objective, namely a greater diversity of DBS operators, programming and program pricing.

A more flexible due diligence compliance policy would also assist the Commission to work its way out of a current confused spectrum allocation by allowing existing DBS permittees with fractional DBS spectrum of one, two, three and even up to eleven frequencies

to enter into lease and/or purchase arrangements with existing DBS permittees who will launch, or have launched larger DBS spacecraft, thus expanding satellite hardware choices beyond the present due diligence requirement where only more costly, smaller DBS satellites can be built to serve the same geographical footprint from the same DBS satellite orbital position. Additionally, if certain frequencies are not programmed within the time frame of the due diligence timetable to construct satellites, where leasing and/or purchase of transponders is also available on another permittee's DBS spacecraft under acceptable terms and conditions, then the Commission could reclaim the frequencies and auction them with a much higher probability, due to dramatic improvements in digital compression technology, of numerous small bidders who could conceive of smaller business plans using smaller, fractional frequency capacity.

Leasing and/or purchasing of transponders particularly opens up a whole new world of possibilities for small providers to enter the DBS business with niche and special interest programming, a concept that DBS was originally intended to foster.

The time has come for a deregulation of the DBS industry in terms of what has been a rather narrow due diligence requirement. The infant stage of DBS is over and market conditions should be allowed to take DBS to the next level of development. One way to accomplish all of the public interest goals and policies of the Commission with a potential quick and dramatic increase in competitive position with cable is the transponder lease/purchase concept with requirements for immediate initiation of service to the public. Internet use, high definition television, increased niche programming, cross-licensing of proprietary addressability/conditional access DBS delivery/receiving systems and lower capital investment for delivery to consumers resulting in increased competitive advantage for

DBS to confront the cable monopoly would all be enhanced by a more flexible due diligence regulatory policy which incorporates a transponder leasing and/or purchase alternative for existing and new licensees in the DBS service.

Respectfully submitted,



Robert W. Johnson
Chairman, CEO

April 6, 1998